



State of New Jersey  
**DEPARTMENT OF HEALTH AND SENIOR SERVICES**  
OFFICE OF EMERGENCY MEDICAL SERVICES  
PO BOX 360  
TRENTON, N.J. 08625-0360

JON S. CORZINE  
Governor

[www.nj.gov/health](http://www.nj.gov/health)

FRED M. JACOBS, M.D., J.D.  
Commissioner

May 9, 2006

Mr. Robert Clays  
Able Ambulance Service  
61 5th Street  
Somerville, NJ 08876

Re: **Notice of Proposed Assessment of Penalties:**  
**Mobility Assistance Vehicle Service Provider**  
Investigation Control # 06-B-011

Dear Mr. Clays:

The New Jersey Department of Health and Senior Services is vested with the responsibility of carrying out the provisions of the Health Care Facilities Planning Act N.J.S.A. 26:2H-1, et seq. which was enacted, in part, to ensure that hospital and related health care services rendered in New Jersey are of the highest quality. As defined at N.J.S.A. 26:2H-2b, health care services include ambulance services. In addition, in accordance with §6.4 and §6.6 of the New Jersey Medical Assistance and Health Services Act N.J.S.A. 30:4D-1 et seq., this Department is responsible for the development of minimum licensure requirements concerning the equipment, supplies and vehicles of providers of mobility assistance vehicle services.

Furthermore, N.J.S.A. 26:2H-5 grants the Commissioner of Health and Senior Services the power to inquire into health care services and to conduct periodic inspections with respect to the fitness and adequacy of the equipment and personnel employed by those services. As such, in furtherance of each of the aforementioned statutory objectives, the Department of Health and Senior Services (the Department) adopted regulations that govern the licensure and inspection of ambulance and mobility assistance vehicle service providers and their vehicles. Those regulations are set forth in their entirety at N.J.A.C. 8:40-1.1, et seq.

On January 20, 2006 at approximately 11:55 a.m., Able Ambulance vehicle #200 was driving on Route 129 near Route 295 in Trenton, New Jersey. An OEMS staff member and myself directly observed your driver smoking while operating an Able

mobility assistance vehicle while transporting a wheelchair bound patient and a passenger in the front seat of the vehicle.

As you should be aware:

N.J.A.C. 8:40-5.4(a) states: The collective duties of the crewmembers staffing an MAV shall include, but are not limited to:

8. Prohibiting smoking within the vehicle at all times

Pursuant to N.J.A.C. 8:40-7.2(c), violation of any portion of N.J.A.C. 8:40 by a provider may be cause for action against the provider, including, but not limited to, suspension or revocation of a provider's license, a formal written warning, monetary penalty, placing the provider's vehicle in "Department-Initiated-Out-of-Service" (DIOOS) status, placing of conditions for continued operation by the provider and/or refusal to issue or renew a license.

As such, in accordance with N.J.A.C. 8:40-7.2(e)9, you are hereby assessed a penalty in the amount of \$250 for the violation of N.J.A.C. 8:40-5.4(a)

A certified check or money order in the amount of \$250 made payable to "Treasurer, State of New Jersey," must be submitted within 30 days from the date of this Notice. In accordance with N.J.S.A. 26:2H-16 and N.J.A.C. 8:40-7.2(h), failure to pay this penalty may result in the delinquent account being referred to the Office of the Attorney General for collection (N.J.S.A. 2A:58-1, et seq.), refusal by the Department to issue or renew a license and/or any such other action as authorized by law. Payment should be forwarded to:

New Jersey Department of Health & Senior Services  
Office of Emergency Medical Services  
P.O. Box 360  
Trenton, N.J. 08625-0360  
Attn: Ms. Karen Halupke

Pursuant to N.J.S.A. 26:2H-13 and N.J.A.C. 8:40-7.3, you are entitled to a hearing before the Office of Administrative Law to contest this proposed penalty assessment. Your request for a hearing on this matter must be submitted in writing and must be accompanied by a response to the deficiency noted above. In the event that you request a hearing, this penalty shall be held in abeyance until such time as the hearing has been concluded and a final decision has been rendered.

Your request for a hearing must be submitted within 30 days from the date of this Notice, and should be forwarded to:

New Jersey Department of Health & Senior Services  
Office of Legal & Regulatory Affairs  
Trenton, N.J. 08625-0360  
Attn: Ms. Michele Stark

Please include control number 06-B-011 on all of your correspondence. Finally, please note that failure to submit a request for a hearing within 30 days from the date of this Notice shall render this Notice final, and the entire \$250 shall be immediately due and payable.

If you have any questions concerning this matter, please do not hesitate to contact Samuel Stewart, Esq. of my office at (609) 633-7777.

Sincerely,



Karen Halupke RN, M.Ed.  
Director,  
Emergency Medical Services

c: David Gruber, Senior Assistant Commissioner  
Joseph Tricarico, Jr., Assistant Commissioner  
Colleen DeMarks, Medicaid  
Michele Stark, OLRA  
Samuel Stewart, Esq., OEMS  
✓ Charles McSweeney, OEMS  
Donald Roberts, OEMS

SENT VIA REGULAR US MAIL  
AND CERTIFIED MAIL #7002 2410 0003 3470 4234  
RETURN RECEIPT REQUESTED